

REMARKS/ARGUMENTS

Applicant submits this amendment in response to the Office Action mailed June 23, 2006. A petition for a three-month extension of the term for response to said Office Action, to and including December 23, 2006, is transmitted herewith.

Applicant respectfully requests reconsideration and allowance of claims 1 and 4-20 that are pending in the present application. Applicant has amended claims 1, 10, 12 and 17. No new matter has been added by these claim amendments. Applicant has cancelled claims 2 and 3.

In the Office Action, the drawings were objected to under 37 CFR 1.83(a). The Action asserts that the drawings must show every feature of the invention specified in the claims. Specifically, the Office Action states that "the embodiments where the tool is a curling iron and the heating element having a corrugated surface, must be shown or the feature(s) canceled from the claim(s)." (Office Action at page 2). Applicant respectfully disagrees. 35 U.S.C. 113 provides that the applicant shall furnish a drawing where necessary for the understanding of the subject matter to be patented. Page 8 line 23 through page 9, line 2 of the specification provides that the "contacting elements 4 can have an upper surface 24 that is...corrugated for crimping hair...to provide other hair styling effects." It is well known to a person having skill in the art what the term "corrugated" means. Moreover, the American Heritage Dictionary defines

"corrugate" as "to shape into folds or parallel and alternating ridges and grooves." As such, a drawing is not necessary for the understanding of the heating element having a corrugated surface. Reconsideration and withdrawal of the objection to the drawings is respectfully submitted. With regard to the tool being a curling iron, claim 3 has been cancelled, thus obviating this objection.

Claim 10 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Action states that in line 2, "the inner clamping element" lacks a prior antecedent. In response, applicant has amended claim 10 to refer to the proper antecedent. As such, applicant respectfully submits that this rejection should be withdrawn.

Claims 1, 5-10, 12-14 and 16-20 were rejected under 35 U.S.C. 102(b) as being anticipated by Decker. (U.S. Patent 1,948,467), hereinafter "Decker." Claim 1 provides for a hair treatment system having a hair styling tool having a pair of pivotally connected arms, one or more hair contacting elements connected to the hair styling tool, a securing frame that can be connected to the one or more hair contacting elements and/or the hair styling tool and an application cloth for applying a substance to selected portions of a person's hair, wherein the hair styling tool is a heatable flat iron.

Decker relates to a "hair waving apparatus and is particularly adapted to the so-called 'permanent waving' of

hair upon the human head by what is generally known by as the 'Croquignole' method." (Pg. 1, lns. 1-5). However, Decker does not teach or suggest "wherein said hair styling tool is a flat iron," as disclosed in claim 1 of the present invention. In fact, Decker discloses a "cover consisting of two arcuate or parti-cylindrical sections 18 and 19." (Id., lns. 83-85). As such, applicant respectfully requests that the rejection as to claim 1 be withdrawn.

The rejection as to claims 5-10 should also be withdrawn, inasmuch as each of these claims depends, directly or indirectly, from claim 1.

With regard to claim 12, Decker does not teach or suggest "wherein said hair styling tool is a flat iron," as disclosed in claim 12 of the present invention. As previously noted, Decker relates to a "hair waving apparatus and is particularly adapted to the so-called 'permanent waving' of hair upon the human head by what is generally known by as the 'Croquignole' method." (Pg. 1, lns. 1-5). Decker discloses a "cover consisting of two arcuate or parti-cylindrical sections 18 and 19." (Id., lns. 83-85). As such, applicant respectfully requests that the rejection as to claim 12 be withdrawn.

The rejection as to claims 13-14 and 16 should also be withdrawn, inasmuch as each of these claims depends, directly or indirectly, from claim 12.

With regard to claim 17, Decker does not teach or suggest "wherein said hair styling tool is a flat iron," as disclosed in claim 17 of the present invention. As

previously noted, Decker relates to a "hair waving apparatus and is particularly adapted to the so-called 'permanent waving' of hair upon the human head by what is generally known by as the 'Croquignole' method." (Pg. 1, lns. 1-5). Decker discloses a "cover consisting of two arcuate or parti-cylindrical sections 18 and 19." (Id., lns. 83-85). As such, applicant respectfully requests that the rejection as to claim 17 be withdrawn.

The rejection as to claims 18-20 should also be withdrawn, inasmuch as each of these claims depends, directly or indirectly, from claim 17.

Claims 1, 3, 4, 6, 7, 9, 11 and 17-20 were rejected under 35 U.S.C. 102(b) as being anticipated by Salvio (U.S. Patent 2,065,874), hereinafter "Salvio." As previously noted, claims 1 and 17 disclose "wherein said hair styling tool is a flat iron." Salvio relates to "a hair curler" which not only grasps and curls the hair, but at the same time, and with the same operation, locally applies a curling iron or setting lotion." (Pg. 1, lns. 4-9). Salvio does not teach or suggest wherein the hair styling tool is a flat iron. As such, applicant respectfully submits that the rejection should be withdrawn as to claims 1 and 17.

The rejection as to claims 4, 6, 7, 9, 11 and 17-20 should also be withdrawn, inasmuch as each of these claims depends, directly or indirectly, from claim 1 and 17, respectively. By the present amendment, applicant has cancelled claim 3.

Claims 1, 2 and 4-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Okumoto et al. (U.S. Patent 6,173,718), hereinafter "Okumoto," in view of Salvio.

Okumoto relates to "a hair styling iron used for giving a press treatment in which the hair is exposed to heat and pressure." (Col. 1, lns. 5-8). The Office Action admits that Okumoto does not include "the securing frame and the application cloth." (Office Action at pg. 4). As will be discussed below, Salvio cannot be properly relied upon to remedy this deficiency.

Applicant respectfully submits that the Examiner has failed to establish a motivation to combine the teachings of Okumoto and Salvio. Applicant respectfully submits that the Examiner has engaged in improper hindsight reconstruction by picking and choosing teachings of the two references after the benefit of reading the instant application. To reach a proper determination under 35 U.S.C. § 103, knowledge of the applicant's disclosure must be put aside in reaching this determination, and the legal conclusion must be reached on the basis of the facts gleaned only from the prior art. M.P.E.P. § 2142. The references in no way teach or suggest placing the holding bail 11 and fabric tube 8 of Salvio around the plate portion 6 ("formed with rectangular recess 7") of Okumoto to arrive at the teachings of the instant application. Instead, the only motivation that could be relied upon is found in applicant's disclosure. Therefore, the Examiner's reasoning (1) does not establish a motivation to combine the teachings of Okumoto and Salvio; and (2) amounts to

improper hindsight reconstruction, as opposed to the reconstruction prescribed by M.P.E.P. §§ 2142 and 2143.


Furthermore, applicant respectfully submits that Salvio teaches away from combining the heatable flat iron of Okumoto with the holding bail 11 and fabric tube 8 of Salvio. It is improper to combine references where the references teach away from their combination. M.P.E.P. § 2145(X)(D)(2). The teachings of Salvio are that "one of the principal objects of the invention is to provide a hair curler which not only grasps and curls the hair, but at the same time, and with the same operation, locally applies a curling or setting lotion." (Pg. 1, col. 1, lns. 4-8). The fabric tube 8 is placed over and surrounds tubular members 1 and 2. If placing this fabric tube 8 of Salvio over the plate portion 6 with rectangular recess 7 of Okumoto were possible, it would defeat the purpose of Okumoto, which is to provide a press treatment in which the hair is exposed to heat and pressure. Further, Okumoto provides for having a rectangular recess 7, which would not be possible with Salvio. Moreover, Okumoto provides for ridges 14 on the perimeters of the plate portions 6 and 17 with flocking on the outer surfaces in order to prevent the excessive sensation of heat should an inadvertent touch occur on the skin with the outer surface or perimeter of the plate portions 6 or 17. Salvio would render Okumoto inoperable for its intended purpose, thereby defeating a benefit of Okumoto. As such, applicant respectfully submits tha the rejection should be withdrawn.

In view of the foregoing, applicant respectfully requests favorable reconsideration and withdrawal of the

rejections of the claims. Also, applicant respectfully requests that this application be passed to allowance.

Respectfully submitted,

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